

REMARKS

This Amendment is responsive to the final Office Action dated December 9, 2008. Applicant has amended claims 1, 19, and 37 to address formality issues and place the claims in better form for consideration on appeal. Applicant respectfully requests entry of the amendments to claims 1, 19, and 37. Claims 1, 2, 4, 6–9, 11–13, 15–20, 22–24, and 26–40 are pending.

Withdrawal of Finality of the Office Action

Applicant respectfully requests withdrawal of the finality of the Office Action because the Examiner has rejected a claim not amended by the Applicant on newly cited art. In particular, in the final Office Action, non-amended independent claim 37 was rejected under 35 U.S.C. § 102(b) as being anticipated by Tsukamoto et al. (U.S. Patent No. 5,819,163). MPEP 706.07(a) states that:

[A] second or any subsequent action on the merits in any application . . . will not be made final if it includes a rejection, on newly cited art, other than information submitted in an information disclosure statement . . ., of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art.

Thus, the finality of the Office Action is improper in view of the rejection of independent claim 37 as anticipated by Tsukamoto et al., and should be withdrawn.

Claim Rejection Under 35 U.S.C. § 102

Tsukamoto et al.

In the final Office Action, claims 1, 2, 4, 6–9, 12, 13, 17, 19, 20, 22–24, 26, 27, 29, 30, 33, and 35–40 were rejected under 35 U.S.C. § 102(b) as being anticipated by Tsukamoto et al. (U.S. Patent No. 5,819,163, hereinafter “Tsukamoto”). In addition, claims 11, 15, 16, 18, 28, 31, 32, and 34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Tsukamoto. Applicant respectfully traverses the rejection. Tsukamoto fails to disclose each and every feature of the claimed invention, and provides no teaching that would have suggested a rational reason to arrive at the claimed invention.

Independent Claim 1

Independent claim 1 recites a programmer for a medical device, the programmer including a first circuit board within a first housing member, an internal antenna mounted within the first housing member, where the internal antenna defines an aperture, a second circuit board disposed over the first circuit board within the first housing member, a battery bay that extends into the programmer in substantial alignment with the aperture, where the battery bay extends at least partially into the aperture, and a second housing member disposed over the second circuit board.

With respect to the rejection of independent claim 1, the final Office Action stated (at Item 6) that:

Tsukamoto discloses a portable communication device 50 including a first housing member 53, a first circuit board 60 within the first housing member, an internal antenna 66 mounted within the first housing member, a second circuit board 70 disposed over the first circuit board within the first housing member, a battery bay 111 that extends into the device, and a second housing member 52 disposed over the second circuit board to substantially enclose the first and second circuit boards, wherein the first housing member includes an area that defines the battery bay adjacent the first circuit board (see Figures 5 and 7–9). It can be seen from Figure 5 that internal antenna 66 is raised from circuit board 60 such that when first housing member 53 is in place, the antenna 66 defines an aperture between the first circuit board 60 and housing member 53. Furthermore, when fully assembled, battery bay 111 extends at least partially into and in substantial alignment with the aperture.

Applicant respectfully disagrees that Tsukamoto discloses each and every element of independent claim 1. For example, Tsukamoto fails to disclose or suggest a programmer including internal antenna that defines an aperture, much less a programmer including a battery bay in substantial alignment with the aperture, where the battery bay extends partially into the aperture defined by the internal antenna.

Tsukamoto fails to disclose or even suggest that the antenna 66 defines an aperture, and it is unclear how the figures of Tsukamoto illustrate an antenna 66 that defines an aperture. As shown in FIGS. 5 and 9 of Tsukamoto, the antenna 66 disclosed therein is configured as a solid component that is coupled to the surface of circuit board 63. The Office Action reasoned that the internal antenna 66 of the Tsukamoto device defines an aperture because the antenna 66 is raised from the circuit board 60 such that when case assembly 53 is in place, the antenna 66 defines an aperture between the first circuit board 60 and case assembly 53. Applicant respectfully

disagrees that any space defined between the first circuit board 60 and case assembly 53 is an aperture defined by the antenna 66. Instead, as shown in FIGS. 3 and 5 of Tsukamoto, the configuration of the case assembly 53 defines the space between the first circuit board 60 and the case assembly 53.

In Tsukamoto, the antenna 66 appears to protrude from the surface of circuit board 63 (shown in FIG. 9) and fit within the space between an inner surface of the case assembly 53 and the circuit board 63 when the device is fully assembled. However, this in no way suggests that the antenna 66 defines an aperture. Even if there is a space between the inner surface of case assembly 53 and circuit board 63 in the area adjacent the antenna 66 when the Tsukamoto device is assembled, such a space may not reasonably be characterized as an aperture, much less an aperture defined by the antenna. Moreover, any space between the inner surface of case assembly 53 and circuit board 63 is no way an aperture that a battery bay may partially extend into, as required by independent claim 1.

As described by Tsukamoto, a rear case body 100 has battery mounting portion 111 (shown in FIGS. 5 and 12).¹ Even if the extent the battery mounting portion 111 is characterized as a battery bay, the battery mounting portion 111 fails to meet the requirements of Applicant's claim 1. For example, the battery mounting portion 111 does not extend into the device in substantial alignment with the antenna 66, much less extend partially into an aperture defined by the antenna 66. As shown in FIGS. 5 and 7, the battery mounting portion 111 and the antenna 66 are not positioned within the Tsukamoto device to even permit the battery mounting portion 111 to substantially align with the antenna 66. Thus, even if the antenna 66 disclosed by Tsukamoto defines an aperture, an assertion with which Applicant disagrees, the battery mounting portion 111 could not be in substantial alignment with the aperture, much less extend at least partially into the aperture, as required by Applicant's claim 1.

For at least these reasons, Tsukamoto fails to disclose each and every limitation recited by independent claim 1. Reconsideration and withdrawal of the rejection of claim 1 is respectfully requested.

¹ Tsukamoto, col. 6, lines 8, 9.

Independent Claims 19 and 37

Independent claim 19 recites a programmer for a medical device comprising a circuit board within a programmer housing, an internal antenna mounted within the programmer housing and connected to the circuit board via a connector, where the internal antenna defines an aperture and is displaced from the circuit board, and a battery bay formed within the programmer housing, the battery bay being aligned substantially concentrically with the aperture. Claim 19 further requires that the battery bay extends at least partially into the aperture.

Independent claim 19 was rejected as being anticipated by Tsukamoto on the same basis used to reject independent claim 1. For at least the reasons discussed with respect to claim 1, Tsukamoto fails to teach or disclose all the limitations recited in claim 19. For example, Tsukamoto fails to teach or disclose an antenna that defines an aperture or a battery bay that extends at least partially into an aperture defined by an antenna, as required by claim 19.

Furthermore, Tsukamoto fails to disclose or suggest a battery bay that is aligned substantially concentrically with the aperture defined by the antenna, or an internal antenna that is connected to a circuit board that is within the programmer housing via a connector, as required by claim 19. As discussed above with respect to independent claim 1, in the device disclosed by Tsukamoto, the battery mounting portion 111 and the antenna 66 are not positioned to permit the battery mounting portion 111 to substantially align with the antenna 66, much less align substantially concentrically with an aperture defined by the antenna 66.

The Office Action failed to address the feature of Applicant's claim 19 that requires the battery bay to be aligned substantially concentrically with the aperture, as required by claim 19. As provided in 37 C.F.R. 1.104(c)(2), the Examiner must designate the particular part of a reference as nearly as practicable. However, with respect to claim 19, the Examiner has failed to do so. Accordingly, Applicant requests that a subsequent Office Action address each and every limitation of claim 19, e.g., a battery bay aligned substantially concentrically with an aperture defined by an antenna, or withdraw the rejection.

Independent claim 37 recites a programmer for a medical device comprising a first circuit board within a first housing member, an internal antenna that defines an aperture, where the internal antenna is mounted to the first circuit board, a battery bay formed in the first housing member adjacent the first circuit board, where the battery bay extends into the programmer in substantial alignment with the aperture of the internal antenna and is aligned substantially

concentrically with the aperture, and extends at least partially into the aperture, an access opening in the first housing member to gain access to the battery bay for placement of batteries in the battery bay, a second circuit board disposed over the first circuit board within the first housing member, and a second housing member disposed over the second circuit board to substantially enclose the first and second circuit boards.

For at least the reasons discussed with respect to claims 1 and 19, Tsukamoto fails to teach or disclose all the limitations recited in claim 37. For example, Tsukamoto fails to teach or disclose a battery bay that extends into the programmer in substantial alignment with an aperture defined by an internal antenna, where the battery bay is aligned substantially concentrically aligned with the aperture and extends at least partially into the aperture, as required by claim 37. As with claim 19, the Office Action failed to meet the burden of demonstrating that Tsukamoto discloses each and every element of independent claim 37. For example, the Office Action fails to address the limitation of claim 37 that requires the battery bay to be aligned substantially concentrically with the aperture defined by an antenna. Applicant respectfully requests that the Examiner address how Tsukamoto discloses or suggests such a feature, or withdraw the rejection.

For at least these reasons, Tsukamoto fails to disclose each and every limitation recited by independent claims 19 and 37. Reconsideration and withdrawal of the rejection of claims 19 and 37 is respectfully requested.

Dependent Claims

Claims 2, 4, 6–9, 11–13, 15–18, 20, 22–24, 26–36, 38–40 are either directly or indirectly dependent on independent claims 1, 19 or 37. As such, each dependent claim includes the limitations of its corresponding independent claim. For the reasons previously stated, Tsukamoto does not disclose or suggest all features of independent claims 1, 19, and 37, and therefore, does not disclose or suggest all features of claims 2, 4, 6–9, 11–13, 15–18, 20, 22–24, 26–36, 38–40. The dependent claims also recite features that are neither disclosed nor suggested by Tsukamoto.

For example, claims 2 and 20 recite a battery bay that is oriented such that batteries placed in the battery bay present a load to an internal antenna. In support of the rejection of claims 2 and 20, the Office Action stated (at Item 7) that “[t]he Examiner takes the position that it can be seen from Figures 5 and 7–9 that the battery 55 is located within the magnetic field of

the antenna 66. Therefore, the placement of the batteries in Tsukamoto places a load on the internal antenna.” Applicant respectfully disagrees with this conclusion of anticipation. Tsukamoto fails to provide any support for the Office Action’s assertion that the Tsukamoto device includes a battery bay that is oriented such that batteries placed within the battery bay presents a load to the internal antenna.

If the Office Action is taking official notice of facts not in the record or relying on common knowledge to support the assertion that the placement of the batteries in the Tsukamoto device “places a load on the internal antenna,”² Applicant respectfully requests the Examiner provide documentary evidence to support the apparent assertion of knowledge in the art. As provided in the M.P.E.P. 2144.03, it is appropriate to take official notice of facts without supporting documentary evidence or to rely on common knowledge in the art in making a rejection where the facts asserted to be well-known are capable of instant and unquestionable demonstration as being well-known. In the present case, Applicant disagrees that the Office Action’s proposition that a placement of batteries “within the magnetic field of the antenna” in Tsukamoto “places a load on the internal antenna” is capable of instant and unquestionable demonstration as being well-known. Nothing within Tsukamoto even suggests that batteries placed within the battery mounting portion 111 or any other “battery bay” of the Tsukamoto device are located “within the magnetic field of the antenna 66,” as the Office Action asserts.

Dependent claims 4 and 22 require that the battery bay is sized to accommodate AAA batteries. The Office Action (at Item 8) indicated that it is the Examiner position that the battery mounting portion 111 of Tsukamoto is sized to accommodate AAA batteries. However, Tsukamoto fails describe the physical dimensions of battery mounting portion 111, and the battery 55 does not appear to be shown in FIG. 4 as an AAA battery. To the extent Tsukamoto describes the battery 55, Tsukamoto states that, “the battery 55 shown in FIG. 7 is smaller than a conventional one. Since the battery is miniaturized, a battery mounting portion 111 is also miniaturized.”³ Accordingly, Tsukamoto fails to provide any basis for the Examiner’s position that the battery mounting portion 111 of Tsukamoto is sized to accommodate AAA batteries. For at least these reasons, the rejection of claims 4 and 22 as being anticipated by Tsukamoto was improper and should be withdrawn.

² Office Action, page 5, item 16.

³ Tsukamoto at col. 10, ll. 11–13.

Dependent claims 17 and 33 require that the internal antenna comprises a loop-like shape that defines the aperture. The Office Action asserted (at Item 14) that FIG. 9 of Tsukamoto illustrates an internal antenna 66 that comprises a loop-like shape around its perimeter. Applicant respectfully disagrees. FIG. 9 of Tsukamoto illustrates a substantially solid antenna 66, which does not define an aperture, and Tsukamoto does not provide any support for the assertion that the internal antenna 66 defines an aperture. Moreover, claims 17 and 33 require a loop-like shape that defines the aperture, not an internal antenna that has a loop-like shape around its perimeter. For at least the reasons outlined above, the internal antenna 66 of Tsukamoto fails to define an aperture and, therefore, fails to comprise a loop-like shape that defines the aperture.

Claims 17 and 33 require an internal antenna comprising a loop-like shape that defines the aperture into which a battery bay at least partially extends. It is unclear how the outer perimeter of the antenna 66 of the Tsukamoto device defines an aperture into which the battery mounting portion 111 extends, as required by Applicant's claims 17 and 33. As shown in FIG. 5 of Tsukamoto, the battery mounting portion 111 does not even align with the perimeter of the antenna 66.

For at least these reasons, Tsukamoto fails to disclose each and every limitation set forth in claims 1, 2, 4, 6–9, 12, 13, 17, 19, 20, 22–24, 26, 27, 29, 30, 33, and 35–40. The Office Action has failed to establish a *prima facie* case for anticipation or obviousness of Applicant's claims 1, 2, 4, 6–9, 12, 13, 17, 19, 20, 22–24, 26, 27, 29, 30, 33, and 35–40 under 35 U.S.C. §§ 102(b) and 103(a). Reconsideration and withdrawal of the rejection of the claims is respectfully requested.

Fang et al.

In the final Office Action, claims 1, 2, 4, 6–9, 11–13, 17–20, 22–24, 26–30, and 33–40 were rejected under 35 U.S.C. § 102(e) as being anticipated by Fang et al. (U.S. Patent No. 6,678,563, hereinafter “Fang”). In addition, claims 15, 16, 31, and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Fang. Applicant respectfully traverses the rejection. Fang fails to disclose or suggest each and every feature of the claimed invention, and provides no teaching that would have suggested a rational reason to arrive at the claimed invention.

Independent Claim 1

In support of the rejection of independent claim 1, the final Office Action stated that:

Fang discloses a programmer 26 comprising a first housing member 46, a first circuit board 40 within the first housing member, an internal antenna mounted within the first housing member, a second circuit board 38 disposed over the first circuit board within the first housing member, a battery bay 30, and a second housing member 44 disposed over the second circuit board to substantially enclose the first and second circuit boards, wherein the first housing member includes an area that defines the battery bay adjacent the first circuit board (see Figure 4). Fang discloses that the internal antenna is formed as a loop and therefore defines an aperture within the center of said loop (see col. 11, ln. 37–58).⁴

Applicant respectfully disagrees with the Office Action.

As an initial matter, Applicant notes that the Office Action failed to address how Fang discloses each and every limitation of independent claim 1. For example, while the Office Action attempted to address the requirement that the antenna define an aperture, the Office Action failed to address the requirement that the battery bay extends into the programmer in substantial alignment with aperture, and that the battery bay extends at least partially into the aperture.

Fang fails to disclose or suggest, among other things, an internal antenna that defines an aperture and a battery bay that extends into the programmer in substantial alignment with the aperture and at least partially into the aperture, as required by claim 1. To the extent Fang discloses an internal antenna, Fang states that the User Interface Module 206 includes circuitry 222 for the 900 MHz transceiver (shown schematically in FIG. 5L), and that the 900 MHz transceiver is formed with a loop antenna, an amplitude-sequenced hybrid transceiver module, and a dedicated micro-controller.⁵ Fang fails to provide any details regarding the loop antenna and battery bay, and certainly fails to disclose or suggest a battery bay that extends into the programmer in substantial alignment with aperture and at least partially into the aperture. Fang offers absolutely no support for the Office Action's assertion that Fang anticipates Applicant's claim 1.

FIGS. 5 and 5L of Fang are simply schematic circuit diagrams of the microprocessor house within the controller and the 900 MHz transceiver, respectively, and provide no

⁴ Office Action, pages 4–5, item 15.

⁵ Fang at col. 11, ll. 37–55.

information with respect to the physical configuration of a loop antenna within the controller of Fang. FIG. 4 illustrates the circuit boards 38, 40, but fails to illustrate either a battery bay or the loop antenna. Assuming for the sake of argument only that the Fang describes an antenna that defines an aperture based on the statement that the transceiver is in the form loop antenna, Fang fails to provide any description of the loop antenna that would indicate whether the antenna meets the requirement of claim 1. For example, Fang fails to indicate the physical location of the loop antenna within the housing of the controller or the location of the loop antenna relative to a battery bay of the Fang device. Fang also fails to disclose or suggest the dimensions of the antenna. Thus, it is unclear how Fang discloses an antenna that is positioned and sized such that a battery bay extends at least partially into the aperture defined by the antenna and in substantial alignment with the aperture, as required by claim 1.

For at least these reasons, Fang fails to disclose each and every limitation recited by independent claim 1. Reconsideration and withdrawal of the rejection is respectfully requested.

Independent Claims 19 and 37

For at least the reasons discussed above with respect to independent claim 1, Fang also fails to disclose or suggest each and every element of independent claims 19 and 37. For example, Fang fails to disclose a battery bay that extends at least partially into the aperture defined by the antenna, as required by claims 19 and 37. Furthermore, Fang fails to disclose a battery bay that is aligned substantially concentrically with the aperture defined by the antenna, as required by claims 19 and 37, or that the internal antenna is connected to a circuit board that is within the programmer housing via a connector, as required by claim 19. Fang fails to disclose the configuration of the loop antenna within the described device and, in particular, the location of an aperture defined by the loop antenna relative to the battery bay.

The Office Action failed to meet the burden of demonstrating that Fang discloses each and every element of claims 19 and 37. For example, the Office Action fails to address how Fang discloses a battery bay that is aligned substantially concentrically with an aperture defined by an internal antenna. Applicant requests that a subsequent Office Action address how Fang teaches or discloses such a feature, or withdraw the rejection.

For at least these reasons, Fang fails to disclose each and every limitation recited by independent claims 19 and 37. Reconsideration and withdrawal of the rejection of claims 19 and 37 is respectfully requested.

Dependent Claims

Claims 2, 4, 6–9, 11–13, 15–18, 20, 22–24, 26–36, and 38–40 are all either directly or indirectly dependent on independent claims 1, 19 or 37. As such, each dependent claim includes the limitations of its corresponding independent claim. For the reasons previously stated, Fang does not teach or disclose all features of independent claims 1, 19, and 37, and therefore, does not teach or disclose all features of claims 2, 4, 6–9, 11–13, 15–18, 20, 22–24, 26–36, and 38–40. The dependent claims also recite limitations that are neither disclosed nor suggested by Fang.

For example, Fang fails to disclose or suggest a battery bay that is oriented such that batteries placed in the battery bay present a load to an internal antenna, as required by claims 2 and 20. In support of the rejection of claims 2 and 20, the Office Action stated (at Item 16) that, “[t]he Examiner takes the position that it can be seen from Figure 4 that the battery is located within the magnetic field of the antenna (indicated at element 206). Therefore, the placement of the batteries in Fang places a load on the internal antenna.” Applicant respectfully disagrees with the Office Action. Fang does not provide any support for the Office Action’s assertion that the Fang device includes a battery bay configured such that a battery placed within the battery bay presents a load to the antenna.

If the Office Action is taking official notice of facts not in the record or relying on common knowledge to support the assertion that the placement of the batteries in Fang “places a load on the internal antenna,”⁶ Applicant respectfully requests the Examiner provide documentary evidence to support the apparent assertion of knowledge in the art. In the present case, Applicant disagrees that the Office Action’s proposition that a placement of batteries “within the magnetic field of the antenna” in Fang “places a load on the internal antenna” is capable of instant and unquestionable demonstration as being well-known. Nothing within Fang even suggests that the battery is placed “within the magnetic field of the antenna,” as the Office Action asserts. As previously outlined, Fang fails to describe the physical configuration of the loop antenna within the controller or the position of the battery bay relative to the loop antenna.

⁶ Office Action, page 5, item 16.

Accordingly, Fang fails to provide any support for the assertion that a battery placed within the battery bay is “within the magnetic field of the antenna.”

Dependent claims 4 and 22 specify that the battery bay is sized to accommodate AAA batteries. The Office Action (at Item 17) indicated that it is the Examiner’s position that the size of battery 30 disclosed by Fang suggests that the battery bay of Fang is sized to accommodate AAA batteries. However, Fang fails describe the physical dimensions of the battery 30, and the battery 30 does not appear to be shown in FIG. 4 as an AAA battery. Instead, Fang generally describes the battery 30 as an industry-standard battery, e.g., a Lithium Ion battery used in association with a particular cellular phone.⁷ Accordingly, Fang fails to disclose the requirements of claims 4 and 22.

Claims 8 and 26 specify that the internal antenna is mounted to the first circuit board on a side of the first circuit board opposite the second circuit board, and a display is mounted to the second circuit board on a side of the second circuit board opposite the first circuit board. In support of the rejection of claims 8 and 26, the Office Action referred to FIG. 4 of Fang and asserted FIG. 4 demonstrates that Fang discloses the arrangement of the internal antenna, display, and circuit boards recited in claims 8 and 26.⁸ Applicant respectfully disagrees. FIG. 4 of Fang does not illustrate an internal antenna, and Fang fails to disclose or even suggest the arrangement of an antenna on a circuit board. Accordingly, it is unclear how Figure 4 of Fang discloses or suggests the particular arrangement of the internal antenna, display, and circuit boards recited in claims 8 and 26.

Moreover, Fang appears to disclose that the loop antenna of the device is included on the circuit board 38, which appears to be the same circuit board on which a display is mounted.⁹ In contrast, claims 8 and 26 require the internal antenna to be mounted to a first circuit board, and a display to be mounted to a second circuit board. Fang fails to disclose or suggest that the loop antenna and display are mounted on different circuit boards. Accordingly, claims 8 and 26 are patentable over Fang.

Claims 9 and 27 specify that the first circuit board of the programmer includes telemetry circuitry and the second circuit board includes control circuitry to control the display and the telemetry circuitry. In support of the rejection of claims 9 and 27, the Office Action referred to

⁷ Fang at col. 8, ll. 48–55.

⁸ Office Action, pages 5–6, item 19.

⁹ See Fang at col. 11, ll. 54–55 and FIG. 4.

column 8, line 64 – column 9, line 23 of Fang. At the cited portions of Fang, Fang does not disclose or suggest that the controller described therein includes a first circuit board including telemetry circuitry and a second circuit board including control circuitry to control the display and the telemetry circuitry. Instead, at column 8, line 64 – column 9, line 23, Fang discloses a microprocessor 36 that is implemented on a circuit board 38, where the microprocessor 38 includes a driver for the display and a 900 MHz transceiver (which includes the loop antenna). Fang further describes the 900 MHz transceiver as being part of the User Interface Module 206, which is also placed on the same circuit board 38.¹⁰ Fang fails to disclose or suggest that telemetry circuitry is located on the “second” circuit board 40 (as characterized by the Office Action). Rather, Fang discloses that the second circuit board 40 merely serves as an input signal conditioning card.¹¹ For at least these reasons, Fang fails to disclose or suggest a first circuit board that includes telemetry circuitry and a second circuit board that includes control circuitry to control the display and the telemetry circuitry, as required by claims 9 and 27.

For at least these reasons, Fang fails to disclose or suggest each and every limitation set forth in claims 1, 2, 4, 6–9, 11–13, 17–20, 22–24, 26–30, and 33–40. The Examiner has failed to establish a *prima facie* case for anticipation or obviousness of Applicant’s claims 1, 2, 4, 6–9, 11–13, 17–20, 22–24, 26–30, and 33–40. Reconsideration and withdrawal of the rejection of the claims is respectfully requested.

CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

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¹⁰ Fang at col. 10, ll. 33–35 and col. 11, ll. 37–56.

¹¹ Fang at col. 11, ll. 60–65.